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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,713	03/10/2004	Richard Diana	PTCC121737	5012
26389 7590 06/14/2007 CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			EXAMINER DEMILLE, DANTON D	
			ART UNIT 3771	PAPER NUMBER
			MAIL DATE 06/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/798,713

Applicant(s)

DIANA, RICHARD

Examiner

Danton DeMille

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 is/are allowed.
- 6) ☒ Claim(s) 20-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

**Claims 20-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

In the penultimate line of claim 20, there is no clear antecedent basis for the separable liner and separable binder.

**Claims 20-28, 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason et al. '089 in view of Conti and Marble.**

Mason teaches a flexible bladder 1 with an inlet 4 at the distal end and an outlet 2 at the proximal end. A fluid circulation assembly is also shown for circulating fluid there through. Mason further teaches a foam liner 10 which covers the bladder, column 2, lines 46-54. Mason also teaches the foam can be formed as a pocket into which the bladder fits. This would provide the separable function claimed. While Mason teaches using hook and loop fastening tabs 7 to secure the bladder about the limb any other conventional means of secure the bladder about the limb would have been an obvious provision. Conti teaches using separable flexible straps for securing the system to the user. Mason teaches using foam for the liner however, using foam pieces would have been an obvious provision as taught by Marble. It would have been obvious to one of ordinary skill in the art to modify Mason to use flexible straps as taught by Conti as an obvious equivalent alternative means of securing the bladder about the limb and to use foam pieces for the foam material as taught by Marble as an obvious equivalent form of the material to provide the same function.

Regarding claims 24, 34, Conti teaches flow directing interior seal lines figure 6, element 27. Such would have been an obvious provision in Mason to direct fluid flow distally to proximally.

**Claims 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 20 above and further in view of Copeland et al.**

Mason teaches using a conventional refrigeration system to cool the water and a conventional heating system to heat the water, column 4, lines 1-9. Copeland takes it a step further and includes a control system for controlling the rate of flow 72 of the fluid to the bladder. It would have been obvious to one of ordinary skill in the art to further modify Mason to provide a fluid flow control as taught by Copeland in order to adjust the flow through the system.

**Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 20 above and further in view of Ruscigno.**

Ruscigno discloses a therapeutic pad that comprises a heater as well as pulsed fluid delivery to a bladder (see abstract, col. 1 ln 69). It would have been obvious to one of ordinary skill at the time the invention was made to further modify Mason to provide pulsed fluid delivery as taught by Ruscigno to improve circulation and create muscle relaxation.

**Claims 1-19 are allowable over prior art to which the examiner is aware.**

***Response to Arguments***

Applicant's arguments with respect to claims 20-36 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3771

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9 June 2007

*/Danton DeMille/*

Danton DeMille  
Primary Examiner  
Art Unit 3771